National Energy Board | Office national de l'énergie

National Energy Board Report

Enbridge Pipelines Inc.

OH-002-2015

Volume I: Our Decisions and Recommendations

April 2016

Facilities

Canada

National Energy Board Report

In the Matter of

Enbridge Pipelines Inc.

Application dated 5 November 2014 for the Line 3 Replacement Project

OH-002-2015

Volume I: Our Decisions and Recommendations

April 2016

Permission to Reproduce
Materials may be reproduced for personal, educational and/or non-profit activities, in part or in whole and by any means, without charge or further permission from the National Energy Board, provided that due diligence is exercised in ensuring the accuracy of the information reproduced; that the National Energy Board is identified as the source institution; and that the reproduction is not represented as an official version of the information reproduced, nor as having been made in affiliation with, or with the endorsement of the National Energy Board.

For permission to reproduce the information in this publication for commercial redistribution, please e-mail: info@neb-one.gc.ca

Autorisation de reproduction
Le contenu de cette publication peut être reproduit à des fins personnelles, éducatives et/ou sans but lucratif, en tout ou en partie et par quelque moyen que ce soit, sans frais et sans autre permission de l'Office national de l'énergie, pourvu qu'une diligence raisonnable soit exercée afin d'assurer l'exactitude de l'information reproduite, que l'Office national de l'énergie soit mentionné comme organisme source et que la reproduction ne soit présentée ni comme une version officielle ni comme une copie ayant été faite en collaboration avec l'Office national de l'énergie ou avec son consentement.

Pour obtenir l'autorisation de reproduire l'information contenue dans cette publication à des fins commerciales, faire parvenir un courriel à : info@neb-one.gc.ca

© Her Majesty the Queen in Right of Canada 2016 as represented by the National Energy Board
Cat No. NE4-4/2016-2E

ISBN 978-0-660-04894-9

This report is published separately in both official languages. This publication is available upon request in multiple formats.

Copies are available on request from:
The Publications Office
National Energy Board
517 Tenth Avenue S.W.
Calgary, Alberta, T2R 0A8
E-Mail: publications@neb-one.gc.ca
Fax: 403-292-5503
Phone: 1-800-899-1265

For pick-up at the NEB office:
Library
2nd Floor

Printed in Canada

© Sa Majesté la Reine du Chef du Canada 2016 représentée par l'Office national de l'énergie
No de cat. NE4-4/2016-2F

ISBN 978-0-660-04895-6

Ce rapport est publié séparément dans les deux langues officielles. On peut obtenir cette publication sur supports multiples, sur demande.

Demandes d'exemplaires :
Bureau des publications
Office national de l'énergie
517, Dixième Avenue S.-O.
Calgary (Alberta) T2R 0A8
Courrier électronique : publications@neb-one.gc.ca
Fax : 403-292-5576
Téléphone : 1-800-899-1265

Des exemplaires sont également disponibles à la bibliothèque de l'Office
Deuxième étage

Imprimé au Canada

Volume I Table of Contents

1.1 Introduction 1
1.2 The Context for the Line 3 Replacement Program 1
1.3 The Role of the National Energy Board 3
1.4 Environmental and Socio-Economic Assessment 4
1.4.1 The Board's Conclusion on Environmental Assessmen 4
1.4.2 The Board's Environmental Assessment Process 4
1.5 Decommissioning the Existing Line 3 Pipeline 6
1.5.1 The Board's Conclusion on Decommissioning 6
1.5.2 The Panel's Policy Recommendation on Decommissioning 7
1.5.3 The Board's Decommissioning Conditions 8
1.6 Views and Concerns of Aboriginal Groups 9
1.6.1 The Board's Views on the Importance of Continuing Consultation with Aboriginal Groups 10
1.6.2 The Panel's Policy Recommendation on Monitoring by Aboriginal Groups 12
1.7 Our Recommendations and Decisions on the Project 12
1.7.1 Recommendations under Section 52 of the *National Energy Board Act* and under the *Canadian Environmental Assessment Act, 2012* 12
1.7.2 Decision under Section 58 of the *National Energy Board Act* 13
1.7.3 Decision under Section 45.1 of the *National Energy Board Onshore Pipeline Regulations* 14

1.1 Introduction

After considering and weighing all of the evidence before it, the National Energy Board (NEB or Board) has concluded that the Line 3 Replacement Program (Project) is in the overall Canadian public interest. The Board is also of the view that, with the implementation of mitigation measures, including the Board's conditions, the Project is not likely to cause significant adverse environmental effects.

The Project will remove from service approximately 1,067 kilometres of aging pipeline between Hardisty, Alberta and Gretna, Manitoba and replace it with new pipeline constructed to modern standards: it will make an existing pipeline system safer. The Board also imposes Project-specific conditions that will further enhance pipeline safety, environmental protection, and consultation with those affected by the Project. As with all pipelines the Board regulates, the Board will verify compliance with and enforce these conditions and other regulatory requirements if the Project proceeds.

Volume I of this Report discusses the context for the Project, the role of the Board, and some of the key factors we assessed in determining whether the Project is in the public interest. It also highlights some of the common views and concerns we heard from hearing participants. The Board's recommendations and decisions on the Project are contained in Volume I, as well as other recommendations of a policy nature that this Panel of three Board Members makes to the broader NEB organization and to stakeholders.

Volume II of this Report contains a description of all Project elements. It includes our detailed assessment of environmental and socio-economic factors, Aboriginal matters, public consultation, and the economic feasibility of the Project. It also includes our detailed assessment of how the Existing Line 3 Pipeline (as defined in Volume II) will be decommissioned and how the Line 3 Replacement Pipeline (as defined in Volume II) will be constructed and operated.

Volumes I and II, taken together, constitute the Board's reasons for its recommendations and decisions on the Project.

1.2 The Context for the Line 3 Replacement Program

This Project is an important step in the continuing lifecycle of the Line 3 pipeline. Pipeline replacement is one way that a pipeline can be maintained to ensure its continued safe operation. In this case, if the Existing Line 3 Pipeline were not removed from service, it would require ongoing pressure restrictions and repairs, including extensive multi-year integrity digs. In contrast, the new Line 3 Replacement Pipeline will be built to modern standards and will operate with improved safety and reliability. This is a significant benefit of the Project.

The Board regulates Canada's interprovincial and international pipelines, including Line 3, over their entire lifecycle: from design, through construction and operation, to decommissioning and eventual abandonment. The NEB's role does not end when a project is approved: the Board requires that people and the environment be protected throughout the entire pipeline lifecycle. The NEB imposes safety and environmental requirements on pipeline companies through a variety of means, including regulations and project-specific conditions. These are intended to ensure, among other things, that operators continue to maintain, repair and upgrade their pipelines as appropriate. Sometimes after a certain lifespan, however, the best way to maintain the integrity of a pipeline is to replace it with new pipe, rather than continuing to repair the old one. The Board is persuaded that this is the case for the Existing Line 3 Pipeline.

This Project is not a so-called "greenfield" project. The Existing Line 3 Pipeline, which was built over 40 years ago and will be removed from service as part of the Project, is housed in a long-established pipeline corridor. The corridor contains up to six active pipelines in close proximity to each other. The vast majority of the new Line 3 Replacement Pipeline route is adjacent to existing linear disturbances, including the corridor. Western Canadian oil is transported through the corridor to access markets in Canada and the United States (Ontario and Quebec, the Upper and Lower Midwest, the Midcontinent and the Gulf Coast).

The proximity of this Project to the larger corridor offers several benefits, including the ability to learn from previous environmental and operating experience in the area and build on existing relationships with stakeholders and Aboriginal groups.

The Board heard evidence from hearing participants about the benefits associated with the Project, and received submissions in support of the Project from a variety of stakeholders and Aboriginal groups. A number of concerns with and objections to the Project were also raised by hearing participants. Even though the Project will result in enhanced overall pipeline safety, it nevertheless involves, among other things, construction activity from Hardisty, Alberta to Gretna, Manitoba. It will, therefore, have adverse impacts on people and the environment for which mitigation is required. The Board has conducted a robust environmental and socio-economic assessment (EA), as required by the *Canadian Environmental Assessment Act, 2012* (CEAA 2012) and the *National Energy Board Act* (NEB Act). The Board's EA encompasses the entirety of the Project and takes into account the views and concerns of hearing participants.

1.3 The Role of the National Energy Board

The NEB is an independent federal regulator of several parts of Canada's energy industry, with the safety of Canadians and protection of the environment as its top priorities. The NEB's purpose is to regulate pipelines, energy development and trade in the Canadian public interest.

This application requires the Board to make recommendations and decisions in respect of the Project under the NEB Act, CEAA 2012, and the *National Energy Board Onshore Pipeline Regulations* (OPR).

The NEB Act requires the Board to determine whether the Project is in the overall Canadian public interest. The Board describes the public interest as being inclusive of all Canadians: it refers to a balance of environmental, economic and social considerations that evolve as society's values and preferences evolve over time. Determining whether the Project is in the public interest involves an exercise of discretion and requires a balancing of the benefits and burdens associated with the Project.

Assessing the potential environmental and socio-economic effects of the Project is an important part of the Board's public interest determination under the NEB Act. The Board also has the responsibility to conduct an environmental assessment of the Project under CEAA 2012. The Board examines the potential effects the Project could have on people and the environment, and how these effects could be mitigated. The Board then assesses the significance of those effects that are predicted to remain after mitigation is applied.

Another important part of the Board's public interest determination is its evaluation of the sufficiency of Enbridge's consultation with those potentially affected by the Project.

Lastly, the Board decides what conditions it will impose on the Project in the public interest and to mitigate potential adverse effects.

The Board reached its recommendations and decisions on the Project after a careful assessment of the evidence filed on the record of the hearing. The Board's hearings are public and are designed to be meaningful, fair and efficient. The Board assesses project applications in a quasi-judicial manner, independent from government, industry, and other stakeholders.

As stated above, the NEB is a lifecycle regulator and will maintain continual regulatory oversight of the Project. The Board will monitor compliance with, and enforce, Project-specific conditions and other regulatory requirements going forward.

1.4 Environmental and Socio-Economic Assessment

1.4.1 The Board's Conclusion on Environmental Assessment

The Board has concluded that, with the Board's conditions and with the implementation of Enbridge's environmental protection procedures and mitigation, the Project is not likely to cause significant adverse environmental effects.

In reaching this conclusion, the Board has recognized that the Project will largely take place in an agricultural setting within and adjacent to a long-established pipeline corridor. As a result, there is pre-existing environmental knowledge of the area and lessons-learned that can be applied to the Project. As one example, results of previous wetland monitoring along the corridor helped to identify the potential residual effects of this Project on wetlands. It also helped to substantiate the effectiveness of mitigation measures.

In a relatively small number of locations, the Line 3 Replacement Pipeline deviates from the established corridor, including in some cases to avoid land-use conflicts or environmentally sensitive areas.

The Board also recognized that the Project will avoid the need for ongoing maintenance and repairs to the Existing Line 3 Pipeline, some of which, such as integrity digs, are of a relatively high intensity. Integrity digs involve ground disturbance in order to expose the pipeline, analyze imperfections, and repair the pipeline as necessary.

1.4.2 The Board's Environmental Assessment Process

The Board's environmental assessment of the Project was completed according to the requirements of CEAA 2012 and includes a cumulative effects assessment. The Board's environmental assessment takes into account all of the evidence submitted in the hearing.

The Board's environmental and socio-economic responsibilities cover the entire lifecycle of a pipeline. These responsibilities include conducting an evidence-based assessment of potential effects of constructing and operating a proposed project and, if the project were to proceed, monitoring compliance with, and enforcing, project-specific conditions and regulatory requirements.

The Board's objectives for environmental and socio-economic assessment are that:

- the potential effects of projects receive thorough consideration before any recommendations or decisions on the project are made;
- projects are not likely to cause significant adverse effects or contribute to significant adverse cumulative effects;

- there is an opportunity for meaningful public and Aboriginal participation; and
- the NEB's process and its decisions or recommendations are transparent and reflect the input of those participating in the environmental assessment and regulatory review process.

The Board's EA of the Project was completed according to the requirements of CEAA 2012 and includes a cumulative effects assessment. We looked at the effects that the construction and operation of the Line 3 Replacement Pipeline and the decommissioning of the Existing Line 3 Pipeline could have on the environment, including people who are part of that environment, and how these effects could be eliminated or reduced. We have set out the conditions the Board will impose on the Project to mitigate potential environmental effects (Appendices III, IV and V).

Hearing participants expressed concerns about a range of environmental and socio-economic issues, including impacts on water quality, vegetation, fish and fish habitat, wildlife and wildlife habitat, air quality, heritage resources, traditional land use, employment and the economy. All of these concerns were considered by the Board.

Many of the concerns expressed related to the effects of a major spill from the Line 3 Replacement Pipeline during operations. On this point, the Board is satisfied that with its new materials and modern construction and operations practices, the likelihood of a failure of the Line 3 Replacement Pipeline can be expected to be lower than the Existing Line 3 Pipeline. Also, with its strategic valve placement and increased instrumentation throughout its route, the consequence of a failure of the Line 3 Replacement Pipeline can be expected to be lower than the Existing Line 3 Pipeline. One of the key outcomes of this Project will be enhanced overall safety of Line 3.

The Board recognizes the importance of effective emergency management, including training, and communication and coordination with stakeholders and first responders. To this end, the Board imposes a condition requiring Enbridge to hold emergency response exercises in each province traversed by the pipeline. This condition, along with other NEB consultation and emergency management requirements (such as those set out in the OPR), will help ensure emergency preparedness.

More information on the design, construction and operation of the Line 3 Replacement Pipeline and emergency management can be found in Volume II, Chapter 3. Complete details of the Board's EA can be found in Volume II, Chapter 7.

1.5 Decommissioning the Existing Line 3 Pipeline

1.5.1 The Board's Conclusion on Decommissioning

The Board is satisfied that, subject to a series of Board-imposed conditions, Enbridge's decommissioning plan, including its proposal to leave the Existing Line 3 Pipeline in-place, is appropriate in the current circumstances.

In assessing Enbridge's decommissioning plan for the Existing Line 3 Pipeline, the Board considered the views of all hearing participants. In this case, the Board received a limited number of submissions requesting that the Existing Line 3 Pipeline be removed from the ground.

There was very little landowner involvement in the hearing process. This appears largely due to Enbridge's efforts to resolve landowner concerns, including its ability to negotiate comprehensive settlement agreements with the Canadian Association of Energy and Pipeline Landowners Associations (CAEPLA), the Manitoba Pipeline Landowners Association (MPLA) and the Saskatchewan Association of Pipeline Landowners (SAPL). The Board is of the view that these negotiated agreements are a positive initiative and encourages their use to resolve issues to the parties' mutual satisfaction. The Board found these agreements to be a persuasive factor in favour of the reasonableness of Enbridge's decommissioning plan. The Board expects Enbridge to continue its consultation with landowners and others affected by the Project, and to meaningfully consider and address information and concerns brought forward.

The Existing Line 3 Pipeline is in a corridor containing up to six pipelines in close proximity to one another. Enbridge presented the Board with evidence of safety and environmental risks associated with excavating and removing pipeline from the ground, including the possibility of damage or ruptures to the adjacent active pipelines and resulting environmental damage. There was insufficient evidence to persuade the Board that there are benefits to removing the Existing Line 3 Pipeline that outweigh the risks at this time.

The Board wishes to be clear that its decision on pipeline removal turned on the specific evidence before it in this case. The Board looks at the totality of the evidence and does not make any assumptions that one option is preferable to another. The Board's decision in this case does not mean that the Board will not order pipeline removal in a future case should the evidence support it. It also does not mean that the Board will not order removal of the Existing Line 3 Pipeline in the future if circumstances change. This is reflected in the Board's conditions for the Project, which require ongoing monitoring and regular reporting by Enbridge, and which allow for the possibility that additional measures, including pipe removal, will be required in the future.

1.5.2 The Panel's Policy Recommendation on Decommissioning

The Panel recommends that the NEB carry out additional assessment and consultation on the policy and regulatory framework that guides advanced stages of a pipeline's lifecycle, including decommissioning and abandonment.

The Panel makes this recommendation to the broader NEB organization for a number of reasons. This Project includes the largest decommissioning the Board has considered to date. It is likely, as federal pipeline infrastructure ages, that the Board will see additional decommissioning and abandonment applications of a large scale similar to this Project. This will mean increased interest in decommissioning and abandonment issues, such as appropriate approach and methodologies, monitoring, the application of new research and technology, and the issue of when it is appropriate to remove pipeline from the ground and when it is appropriate to leave it in-place.

Further, the passage of the *Pipeline Safety Act* in June 2015 (which will come into force in June 2016) brings significant changes to the statutory landscape and will enhance the Board's regulatory oversight of abandoned pipelines.

In carrying out this policy recommendation, the NEB should continue to engage with stakeholders and incorporate their feedback. In the Panel's view, the NEB's work should include an evaluation of the continued usefulness and effectiveness of the decommissioning phase. It should also aim to provide more clarity in terms of the Board's expectations and requirements for decommissioning and abandonment applications in a range of scenarios, including those involving shared pipeline corridors.

The NEB's Filing Manual requires applicants to provide assessments and studies to support the choice between abandonment in-place or pipeline removal. However, for both decommissioning and abandonment, the NEB should consider options to consistently require specific information from applicants about mitigation measures that would be necessary to safely remove pipeline, including its potential environmental effects. This is regardless of whether the applicant's proposed plan is to leave the pipeline in-place. This information would enhance the ability of the Board and hearing participants to examine pipeline removal options in detail, when the circumstances and evidence warrant.

The Board has already carried out some of this policy and regulatory work by, among other things, issuing Guide K to its Filing Manual and amending the *Guidance Notes for the Decommissioning Provisions under the Onshore Pipeline Regulations* (Decommissioning Guidance Notes) in December 2014. However, more can be done. In the Panel's view, the Board's policy and regulatory framework needs to be responsive to the evolving statutory context and the likelihood of additional large decommissioning and abandonment applications in the future.

1.5.3 The Board's Decommissioning Conditions

The Board has imposed conditions on the decommissioning of the Existing Line 3 Pipeline in order to ensure it is carried out safely, the environment is protected, stakeholders continue to be consulted, and the status of the pipeline decommissioned in-place is assessed regularly.

In light of the fact that Enbridge does not intend to decommission the Existing Line 3 Pipeline for several years (until after the Line 3 Replacement Pipeline is in service), and some details of the decommissioning plan are yet to be refined and further research and development is being carried out, Enbridge will be required to make additional filings with the Board before commencing decommissioning activities. These include a detailed Final Decommissioning Plan and a Minimally-Invasive Procedure Evaluation Report.

There is necessarily a degree of uncertainty about the long-term impacts of decommissioning the Existing Line 3 Pipeline in-place. It is possible that negative effects, although unlikely when mitigation measures are applied, could occur many years in the future. For this reason, it is important that a robust monitoring plan be in place to ensure that remedial actions and adaptive management measures will be taken if required. Monitoring results and any remedial actions taken must be transparent to potentially affected parties, and consultation must continue. Accordingly, Board-imposed conditions include the filing by Enbridge of a Decommissioning Treatment Monitoring Program and reporting by Enbridge of the monitoring results to the Board and stakeholders. Enbridge will also be required to notify the Board or obtain Board approval in the event that certain remedial actions or adaptive management measures are required after the Existing Line 3 Pipeline has been decommissioned.

The presence of other operating pipelines in the corridor currently restricts Enbridge's ability to complete some of the remaining steps in the lifecycle of the Existing Line 3 Pipeline, such as removal of above-ground facilities at shared facility sites. Enbridge suggested that the Board could require it to file a proposed plan to complete these remaining activities at the time of abandonment of the last operating pipeline in the corridor. The Board agrees that it should assess and approve these remaining activities before they are carried out. However, in the Board's view, this should be accomplished by way of a future abandonment application, not merely through the approval of a plan.

A future abandonment application will address any and all remaining activities in the lifecycle of the Existing Line 3 Pipeline, including those that may be required due to circumstances that exist at that time. This is consistent with current Board guidance in Guide K to the Filing Manual and its amended Decommissioning Guidance Notes, which are clear that all decommissioned pipelines will require an application to the Board for abandonment.

A future abandonment application will also ensure that stakeholders and Aboriginal groups have the opportunity, at the relevant time, to raise any issues or concerns with the Board and that the remaining activities will be assessed against the requirements and criteria applicable at that time.

The Board therefore imposes a condition requiring Enbridge to file an abandonment application once the remaining steps in the lifecycle of the Existing Line 3 Pipeline can be carried out (excluding ongoing monitoring), or if the Board directs Enbridge to do so for all or any part of the pipeline. The Board also imposes a condition requiring Enbridge, after the Existing Line 3 Pipeline has been decommissioned, to report every five years on the status of the corridor. This information will help the Board regularly assess the ongoing status of the corridor, including the continued appropriateness of the Existing Line 3 Pipeline remaining in-place.

Complete details of the Board's assessment of the decommissioning of the Existing Line 3 Pipeline can be found in Volume II, and particularly Chapter 4.

1.6 Views and Concerns of Aboriginal Groups

As part of its Project assessment, the Board evaluated the sufficiency of Enbridge's consultation with Aboriginal groups. The Board also considered the views and concerns of Aboriginal groups, potential Project impacts on the rights and interests of Aboriginal groups, and proposed measures to avoid or mitigate those impacts.

The Board required Enbridge to provide information about its consultation with Aboriginal groups and the concerns that were raised during that process. The Board also heard directly from many Aboriginal groups, including through oral traditional evidence, whereby Aboriginal peoples, including Elders, gave evidence of their history and culture, their use of the land and water and how the Project may affect them.

The Board received mixed feedback on the Project from Aboriginal groups. Some Aboriginal groups were supportive of the Project, while others were not. However, regardless of support for or opposition to the Project, some common views and concerns were brought forward by more than one, and in some cases by several Aboriginal groups.

Many Aboriginal groups explained their role as stewards of the land and water, and the importance of their responsibility to safeguard the land and water and ensure a healthy environment for future generations. For some Aboriginal groups, this means being involved in a direct, meaningful and ongoing way with the Project.

The Board heard about the importance of incorporating traditional land use information provided by Aboriginal groups into the EA. Aboriginal groups stressed to the Board the fundamental importance of the land, water and natural resources to the history, identity and spirituality of

Aboriginal peoples - if harm is caused, it would significantly impact their well-being and cultural identity.

The Board also heard evidence of the importance of meaningful, healthy relationships and partnerships that are renewed regularly, as well as the interconnectedness between process and substance for Aboriginal peoples. The Board heard concerns about inadequate consultation when the Existing Line 3 Pipeline was originally built, and concerns that Enbridge will stop consulting if the Project is approved.

While the above discussion does not capture all of the views and concerns raised by Aboriginal groups about the Project, it does reflect some of the main issues the Board heard. The views and concerns of Aboriginal groups gave rise to two key findings of the Board concerning ongoing consultation and monitoring of the Project by Aboriginal groups. These are described below. For the Board's full consideration of the concerns raised by Aboriginal groups, and its additional conclusions, please see Volume II of this Report.

1.6.1 The Board's Views on the Importance of Continuing Consultation with Aboriginal Groups

The Board believes there is an important opportunity at this juncture for Enbridge to renew and, in some cases, improve its relationship with Aboriginal groups. Monitoring by Aboriginal groups is one way in which Enbridge can continue to consult, and assess and mitigate impacts of the Project going forward.

For the reasons provided in Volume II, Chapter 6, the Board considers Enbridge's consultation with Aboriginal groups on the Project to have been sufficient to date. However, just as the integrity of the pipeline itself must be maintained and improved where necessary, so must relationships with those affected by the pipeline. This Project, which is an important step in the lifecycle of the Line 3 pipeline, and which is positioned along a broader pipeline corridor, presents a unique opportunity to consider and plan how meaningful consultation with those affected by the pipeline can be continually enhanced.

As with all proponents, the Board expects Enbridge to continue to consult throughout the lifecycle of the Project. Enbridge should engage in ongoing dialogue and meaningfully consider and address information and concerns brought forward by Aboriginal groups in the future. This includes traditional land use information that may be provided to Enbridge after the Board's hearing process.

As stated above, several Aboriginal groups expressed a desire to be involved in a direct, meaningful and ongoing way with the Project. Some groups explained that this would help ensure environmental stewardship and protection of heritage and cultural resources. Some groups also explained that this would facilitate their ability to share in the benefits of the Project.

For its part, Enbridge committed to ensuring that Aboriginal peoples will achieve benefits from the Project.

One of the ways that some Aboriginal groups expressed a desire to be involved in the Project is through monitoring. Enbridge was concerned, however, that given the large number of Aboriginal groups it consulted (approximately 150), it would not be feasible to include all Aboriginal groups in monitoring while still ensuring safe and efficient construction of the Project. As an alternative to monitoring, Enbridge proposed to develop a plan to allow interested Aboriginal groups to observe the construction site and ask questions.

In light of the evidence heard by the Board in thi hearing, the Board imposes two specific conditions on the Project that it wishes to emphasize here.

The first condition requires Enbridge to develop and file with the Board for approval, consultation plans for Aboriginal groups going forward. These plans are to be developed in consultation with Aboriginal groups and are to reflect a collaborative and coordinated consultation approach, as opposed to only information sharing. This means that Enbridge must demonstrably respond to and address concerns raised where reasonable. The plans should also respect the cultural interests of Aboriginal groups regardless of the nature of the land use in the Project area (for example, unoccupied Crown land, occupied Crown land, or privately owned land). Enbridge and participating Aboriginal groups are encouraged to be innovative in order to enhance t' way consultation will occur during the operation of the Line 3 Replacement Pipeline, and after the Existing Line 3 Pipeline has been decommissioned.

The second condition the Board wishes to emphasize here requires Enbridge to develop and file with the Board an Aboriginal Monitoring Plan for the construction phase of the Line 3 Replacement Pipeline, and specifically for the construction of pipeline facilities that fall under section 52 of the NEB Act. The Board appreciates Enbridge's concern that it cannot hire approximately 150 Aboriginal monitors for the Project while ensuring safety and efficiency. This will be taken into account when the Board reviews the Plan. While the Board does not expect Enbridge to hire 150 monitors, there is a reasonable middle ground. The Board expects Enbridge to make efforts to accommodate active monitoring where desired by an Aboriginal group and where reasonable and safe, although observational site visits may be a component of the Plan. If an Aboriginal group wishes to participate in monitoring and Enbridge cannot reasonably accommodate the request, Enbridge will be expected to provide an explanation to the Board as to why.

1.6.2 The Panel's Policy Recommendation on Monitoring by Aboriginal Groups

The Panel recommends that the NEB, the pipeline industry, and Aboriginal groups work together to create a set of principles, objectives or a framework approach that can be used to assist the development of Aboriginal monitoring programs for large pipeline projects.

In the case of this Project, the Board will exercise its regulatory oversight to carefully examine Enbridge's Aboriginal Monitoring Plan, how it was developed, and how it will be implemented. In addition to its direct regulatory oversight, the Board will consider the ultimate effectiveness of the Aboriginal Monitoring Plan to support continual improvement.

More can be done outside of Project condition-compliance, however, to support Aboriginal monitoring of pipeline projects. The Panel believes that Aboriginal monitoring of pipeline projects will happen successfully through the concerted effort and partnership of all parties, including the NEB, over time. The Panel recommends that the NEB work with all parties to facilitate an open dialogue concerning this issue. The Panel is of the view that a set of principles, objectives or a framework approach could be created collaboratively to assist with the development of Aboriginal monitoring programs for large pipeline projects.

1.7 Our Recommendations and Decisions on the Project

1.7.1 Recommendations under Section 52 of the *National Energy Board Act* and under the *Canadian Environmental Assessment Act, 2012*

Pursuant to section 52 of the NEB Act, the Board recommends that a Certificate of Public Convenience and Necessity be issued for the construction and operation of the Section 52 Pipeline and related Facilities, as defined in Volume II.

The Board has set out the terms and conditions (Appendix III of this Report) that it considers necessary or desirable in the public interest, to which the Certificate will be subject if the Governor in Council directs the Board to issue the Certificate.

Pursuant to section 29 of CEAA 2012, the Board is of the view that with the implementation of Enbridge's environmental protection procedures and mitigation measures, and the Board's conditions, the Project is not likely to cause significant adverse environmental effects. This Report also includes the Board's recommended follow-up programs to be implemented in respect of the Project.

1.7.2 Decision under Section 58 of the *National Energy Board Act*

The Board has decided to grant an Order authorizing the construction and operation of the Section 58 Facilities, as defined in Volume II, and exempting Enbridge from the provisions of paragraph 30(1)(a), and sections 31 and 33 of the NEB Act, subject to the conditions set out in Appendix IV of this Report.

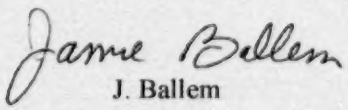
The Board does not grant Enbridge the requested exemptions from paragraph 30(1)(b) or section 47 of the NEB Act. Accordingly, Enbridge is required to apply for leave to open the Section 58 Facilities prior to placing them in service.

The Board is of the view that the Section 58 Facilities are only necessary and in the public interest if the Governor in Council directs the Board to issue a Certificate in respect of the Section 52 Pipeline and related Facilities. Accordingly, the Order is subject to the approval of the Section 52 Pipeline and related Facilities by the Governor in Council. Should they be approved, the Board will issue the Order at the same time as the Certificate.

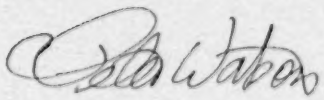
1.7.3 Decision under Section 45.1 of the *National Energy Board Onshore Pipeline Regulations*

The Board has decided to grant an Order approving the decommissioning of the Existing Line 3 Pipeline, as defined in Volume II, subject to the conditions set out in Appendix V of this Report.

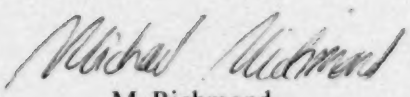
The Project was applied for, and the Board assessed it, as a package that includes the decommissioning of the Existing Line 3 Pipeline and the construction and operation of the Line 3 Replacement Pipeline. One is dependent on the other and the decommissioning will be completed after the Line 3 Replacement Pipeline is in service. Therefore, the Order is subject to the approval of the Section 52 Pipeline and related Facilities by the Governor in Council. Should they be approved, the Board will issue the Order at the same time as the Certificate.



J. Ballem
Presiding Member



C.P. Watson
Member



M. Richmond
Member

Calgary, Alberta

April 2016